Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1974

NO. 74-100

ROY D. GARNER,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

SUPPLEMENT AND ADDENDUM TO PETITION FOR WRIT OF CERTIORARI WITH EXHIBITS

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To the Honorable Presiding Justice and Associate Justices of the Supreme Court of the United States:

Petitioner requests leave to file this Supplement and Addendum to the Petition for Writ of Certiorari pending before this Court.

As of the date of dictation of this Supplement (January 6, 1975) no response has yet been received from the attorney for the plaintiff, respondent herein.

The reason for this Supplement and Addendum to

Petition becomes obvious in context of the background of the Petition.

The Court of Appeals for the Ninth Circuit Majority indicated in their decision below (501 F.2d 228; Appendix to Petition for Certiorari, page 9) that the taxpayer must assert his Fifth Amendment position at the time of the preparing or filing of the tax return:

> "Essentially, the question is whether in this situation the Fifth Amendment is a right which can be invoked retrospectively or whether it is a privilege which must be claimed when the incriminating information is requested. Here, we hold it to be a privilege which Garner should have asserted in his tax return. Having failed to do so, he may not claim its benefit during his trial."

This decision was rendered in the face of the Dissent which pointed out that § 7203 of Title 26 U.S.C. made the assertion of the right a misdemeanor.

This situation now, as presented to the Court in this Supplement, brings to mind Job's lament (3:25)

> . . . "For the thing which I greatly feared has come upon me, and that which I was afraid of is come unto me" . . .

because:

1. Petitioner filed his 1973 tax return asserting his Fifth Amendment privilege against incrimination, along with an explanatory letter (see Exhibits A and B annexed hereto).

2. The Internal Revenue Service, upon receipt, declared petitioner's tax return to be "not acceptable"

and not a "return" and suggested that criminal penalties might be forthcoming under 26 U.S.C. § 7203 (see Exhibit C annexed hereto).

In the instant case, the United States Government, through its attorneys, argued to the court below (and the Majority endorsed the argument) that the privilege against self-incrimination had to be asserted at the time the tax return was filed. The same Government, through its Internal Revenue Service, does not agree. This would seem to be a classic case of the left hand not knowing what the right hand is doing. *Cf. Giglio v. United States*, 405 U.S. 150 (1972).

In addition to the above supplementary information, it is further submitted that the Petition for Writ of Certiorari should be granted because the Majority opinion in the Ninth Circuit used as a basis of its analysis the distinction between "right" and "privilege" as applied to the constitutional mandates contained within the Fifth Amendment. That proposition is no longer viable, for in *Graham v. Richardson*, 403 U.S. 365, 375 (1971), this Court declared:

> " . . . [T]his Court now has rejected the concept that constitutional rights turn upon whether a governmental benefit is characterized as a 'right' or as a 'privilege.' *Sherbert v. Verner*, 374 U.S. 398, 404, 83 S.Ct. 1790, 1794, 10 L.Ed.2d 965 (1963); *Shapiro v. Thompson*, 394 U.S., at 627 n. 6, 89 S.Ct., at 1327; *Goldberg v. Kelly*, 397 U.S. 254, 262, 90 S.Ct. 1011, 1017, 25 L.Ed.2d 287 (1970); *Bell v. Burson*,

402 U.S. 535, 539, 91 S.Ct. 1586, 1589,
29 L.Ed.2d 90 (1971)."

CONCLUSION

The decision of the Ninth Circuit Court of Appeals affirming the judgment in the instant case was based on nothing more than a semantical quibble over definitions of the word "right" as opposed to the word "privilege." The Court of Appeals arrived at a conclusion diametrically opposed to any realistic and practical application of the law.

The Petition for Writ of Certiorari should be granted and the judgment of conviction, and of the Court of Appeals, should be reversed.

Respectfully submitted,

BURTON MARKS

Attorney for Petitioner

JONATHAN K. GOLDEN
Associate Counsel

EXHIBITS

1040 US Department of the Treasury—Internal Revenue Service Individual Income Tax Return 1973

For the year January 1–December 31, 1973, or other taxable year beginning ..... 1973, ending ..... 19.....

Please print or type

Name (If joint return, give first names and initials of both): ROY D. & ROWENA — Last name: GARNER

Present home address (Number and street, including apartment number, or rural route): 501 N. HARBIN

City, town or post office, State and ZIP code: CARSON CITY NEVADA 89701

COUNTY OF RESIDENCE: WASHOE

Your social security number: 565 34 2357

Spouse's social security no.: 562 30 6316

Occupation — Yours ► REFUSE TO ANSWER — Spouse's ► SELF-EMPLOYED HLW

Filing Status—check only one:

1 ☐ Single
2 ☒ Married filing joint return (even if only one had income)
3 ☐ Married filing separately. If spouse is also filing give spouse's social security number in designated space above and enter full name here ►
4 ☐ Unmarried Head of Household
5 ☐ Widow(er) with dependent child (Year spouse died ► 19)

Exemptions — Regular / 65 or over / Blind

6a Yourself ☒ ☐ ☐ — Enter number of boxes checked ► 2
b Spouse ☒ ☐ ☐
c First names of your dependent children who lived with you: PHYLLIS, JOHN — Enter number ► 2
d Number of other dependents (from line 27) ►
7 Total exemptions claimed ► 4

8 Presidential Election Campaign Fund.—Check ☐ if you wish to designate $1 of your taxes for this fund. If joint return, check ☐ if spouse wishes to designate $1. Note: *This will not increase your tax or reduce your refund.* See note below.

Income

9	Wages, salaries, tips, and other employee compensation. (Attach Forms W-2. If unavailable, attach explanation)	9	10,925
10a	Dividends (See instructions on page 6.) $....., 10b Less exclusion $....., Balance ►	10c	
10d	(Gross amount received, if different from line 10a ... $.....)		
11	Interest income	11	375
12	Income other than wages, dividends, and interest (from line 38)	12	
13	Total (add lines 9, 10c, 11, and 12)	13	
14	Adjustments to income (such as "sick pay," moving expenses, etc. from line 43)	14	
15	Subtract line 14 from line 13 (adjusted gross income)	15	

- If you do not itemize deductions and line 15 is under $10,000, find tax in Tables and enter on line 16.
- If you itemize deductions or line 15 is $10,000 or more, go to line 44 to figure tax.
- CAUTION. If you have unearned income and can be claimed as a dependent on your parent's return, check here ► ☐ and see instructions on page 7.

Tax, Payments and Credits

16	Tax, check if from: ☐ Schedule D ☒ Tax Tables 1–12 Schedule G ☐ Tax Rate Schedule X, Y, or Z ☐ Form 4726 OR ☐ Form 4972	16	7850
17	Total credits (from line 54)	17	
18	Income tax (subtract line 17 from line 16)	18	
19	Other taxes (from line 61)	19	
20	Total (add lines 18 and 19)	20	7850
21a	Total Federal income tax withheld (attach Forms W-2 or W-2P to front) — 21a: 1925		
b	1973 estimated tax payments (include amount allowed as credit from 1972 return) — b:		
c	Amount paid with Form 4868, Application for Automatic Extension of Time to File U.S. Individual Income Tax Return — c: 5500		
d	Other payments (from line 65) — d:		
22	Total (add lines 21a, b, c, and d)	22	7425

Balance Due or Refund

23	If line 20 is larger than line 22, enter BALANCE DUE IRS (Check here ► ☐ . If Form 2210, Form 2210F, or statement is attached. See instructions on page 8.) Pay in full with return. Make check or money order payable to Internal Revenue Service ►	23	434 *
24	If line 22 is larger than line 20, enter amount OVERPAID ►	24	
25	Amount of line 24 to be REFUNDED TO YOU ►	25	
26	Amount of line 24 to be credited on 1974 estimated tax ► — 26:		

Note: 1972 Presidential Election Campaign Fund Designation.—Check ☐ if you did not designate $1 of your taxes on your 1972 return, but now wish to do so. If joint return, check ☐ if spouse did not designate on 1972 return but now wishes to do so.

Sign here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which he has any knowledge.

► X Roy D. Garner — Your signature — Date

► X — Spouse's signature (if filing jointly, BOTH must sign even if only one had income)

► — Preparer's signature (other than taxpayer) — Date 8/13/74

Address (and ZIP Code) — Preparer's Emp. Ident. or Soc. Sec. No.

10—83337-8

Please attach Copy B of Forms W-2 here

Write soc. sec. no. on Check or Money Order. Attach here

SEE LETTER ATTACH

TAXPAYERS COPY

F-9

* INCLUDES INTEREST OF 9

Exhibit "A"

F1

BEST COPY AVAILABLE

EXHIBIT B

LETTER OF ROY D. GARNER ATTACHED TO HIS 1973 INDIVIDUAL INCOME TAX RETURN

To: The District Director
Internal Revenue Service
Ogden, Utah

Dear Sir:

This is to be considered as part of my income tax return to the United States for the year 1973.

I am informed and believe that I am under criminal investigation by various agencies of the United States including, but not limited to the Department of Justice and the Federal Bureau of Investigation. I am further informed and believe that I have been named as a member of organized crime by the Attorney General of the United States and/or his authorized agents and that an intergovernmental agency or agencies will review any income tax returns which I file with a view to securing information which could lead to prosecution of me on federal or state criminal charges. I am further informed and believe that any information contained in my income tax returns will be transmitted to appropriate criminal investigative agencies of the states of California and Nevada for such purpose.

Although I would like to file a complete and detailed return, I am truly concerned that any details of my income and expense other than those entered in this return would be

used against me in a criminal proceeding. I therefore respectfully declare that any information for which space is contained on Form 1040, the attached Individual Income Tax Return, for my wife and myself, and which is not filled in, might lead to or uncover information which might tend to, or actually will incriminate me under either state or federal law. *U.S. v. Sullivan,* 274 U.S. 259 (1926); *Marchetti v. U.S.,* 390 U.S. 29 (1968); *Haynes v. U.S.,* 390 U.S. 85 (1968).

I have therefore furnished on the return a figure for taxable income (line 48, page 2) which I believe to be correct and I have computed my tax accordingly. As you will note, this results in a substantial amount of tax, but if you determine through appropriate processes, in accordance with the principles of due process of law, that I am obligated to pay additional tax, I will pay such determination.

†

EXHIBIT C

LETTER OF INTERNAL REVENUE SERVICE WESTERN REGION - DATED NOVEMBER 26, 1974.

In reply refer to: FL-1264 33120; : mdq S
7-492610029

Registered No. 195666

Roy D. & Rowena Garner
501 North Harbin
Carson City, NV 89701

Re: SSN 565-34-2357 D088
DLN 88211-320-00600-4

Tax Year: 1973

Dear Mr. & Mrs. Garner:

We received a Form 1040, U. S. Individual Income Tax Return, for the above year from you, but it is not acceptable as your income tax return. A taxpayer's return, which does not contain any information relating to the taxpayer's income from which the tax can be computed, is not a return within the meaning of the Internal Revenue Code, or the regulations adopted by the Commissioner. The statutory requirements for filing and the criminal penalty for noncompliance are given on the back of this letter.

This letter constitutes notice to you of the legal requirements concerning filing of income tax returns. Noncompli-

ance may subject you to prosecution under Internal Revenue Code Section 7203, which is reproduced on the back of this letter.

Blank Forms 1040 are enclosed for your convenience.

Sincerely yours,

/s/ John O. Hummel

Director

Enclosures:
Forms 1040 (2)

†

STATE OF CALIFORNIA)
) ss.
County of Orange)

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and employed in the County of Orange, State of California, over the age of eighteen years and not a party to the within action or proceeding; that

My business address is 326½ Main Street, Huntington Beach, California 92648, that on JANUARY 15th, 1975, I served the within SUPPLEMENT AND ADDENDUM TO PETITION FOR WRIT OF CERTIORARI WITH EXHIBITS (Garner v. United States - S. Ct. No. 74-100) on the following named parties by depositing the designated copies thereof in a sealed envelope with postage thereon fully prepaid, in the United States Post Office in the City of Huntington Beach, California, addressed to said parties at the addresses as follows:

SOLICITOR GENERAL OF THE UNITED STATES
U. S. DEPARTMENT OF JUSTICE
WASHINGTON, D. C. 20530 [3 copies]

UNITED STATES ATTORNEY
FOR THE CENTRAL DISTRICT OF CALIFORNIA
12TH FLOOR, U. S. COURTHOUSE
LOS ANGELES, CALIFORNIA 90012 [2 copies]

I declare under penalty of perjury that the foregoing is true and correct.

Executed on JANUARY 15th, 1975, at HUNTINGTON BEACH, CALIFORNIA.

D. A. Standefer

Dean-Standefer, 326½ Main St., Huntington Beach, Ca. 92648
(714) 536-7161